

**SILVERIO M. BARANDA III  
28 AMHURST CT.  
DALY CITY, CA 94015**

**FILED**

APR 14 2009

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**SILVERIO M. BARANDA III,  
MONICA C. BABBEL, et al  
PLAINTIFFS IN PRO PER**

**VS.**

**CARRINGTON MORTGAGE  
SERVICE, LLC.  
BANK OF AMERICA  
AND 1 through 10 Inclusive**

**CV 09**

**1641**

CASE NO. \_\_\_\_\_

**MHP**

**COMPLAINT AT COMMON LAW  
COMPLAINT FOR DAMAGES AND  
EQUITABLE RELIEF UNDER THE  
CIVIL RIGHTS ACT 42 U.S.C. 1983**

**E-filing**

**1.BREACH OF CONTRACT/  
COVENANT OF GOOD FAITH  
AND FAIR DEALING  
2.FRAUD AND RACKETEERING  
3.USURY AND RACKETEERING  
4.INTENTION TO INFLICTION  
OF SEVERE MENTAL AND  
EMOTIONAL DISTRESS**

**DEMAND FOR TRIAL JURY**

**NOW COMES THE PLAINTIFF, SILVERIO M. BARANDA III and MONICA C. BABBEL, and relying on the decision of Haines VS. Kerner, 404 U.S. 519 and shows their complaint as follows:**

**JURISDICTION:**

1. **FOR THE FEDERAL COURT:** This action arises, under title 42 of the United States codes, section 1981, 1983, 1985 and 1986. Jurisdiction is conferred on this court by Title 28 of the United States codes sections, 1331, 1332, and 1343, The unlawful acts and practices complained of herein occurred in the CITY OF DALY CITY, CALIFORNIA, which is situated with this judicial district and involves diversity of citizenship of defendants who are United States residents. Complaint does so involves more than \$10,000.00 in controversy. Jurisdiction is further invoked under 42 U.S.C. 1983, et seq., and

Title 18 U.S.C. sec. 1964 and Title 18 U.S.C. SS 1001/1621, as well as the Constitution 'particularly' the 7<sup>th</sup> Amendment; as this is a "SUIT AT COMMON LAW". This complaint is filed in Properia Persona (in Pro Per), pursuant to Haines vs. Kerner 404 U.S. 519.

**PARTIES TO THE ACTION:**

1. Plaintiff SILVERIO M. BARANDA III is a resident of the United States and Plaintiff MONICA C. BABBEL is a citizen of the United States. This complaint alleges that the Civil Right of the Plaintiffs, SILVERIO M. BARANDA III and MONICA C. BABBEL, 28 AMHURST COURT, DALY CITY, CA 94015, were violated by the actions of the below Defendants.
2. The Defendant, CARRINGTON MORTGAGE, P. O. Box 79001, Phoenix, AZ 85062, is being sued in their Official and Individual capacities.
3. The Defendant, BANK OF AMERICA, 275 S. Valencia Avenue, Brea, CA 92823-6340, is being sued in their Official and Individual capacities.

**FACTUAL BACKGROUND:**

1. On June 2006, I re-financed my home with New Century Mortgage Corporation. On or after July, 2007, Carrington Mortgage Service, LLC took over the loan (Loan Number 1008088197). On February 2006, my niece MONICA C. BABBEL co-signed on a second mortgage with me on 28 Amhurst Ct., Daly City with Bank Of America. Agents/loan officers (Does 1 through 10) did verbally represent to the Plaintiffs that we were approved for a loan in the first amount of \$650,000 and in the second amount \$500,000.00 in the United States which profit the defendants, by charging excessive interest and did so to collect excessive interest payments and fees from the plaintiff and less than 0%-0% credited to the principal they claimed is at risk. On January 2008 I stopped paying for my mortgage in both Carrington Mortgage Services and Bank of America due to job instability. I made my last sales in May 2007 and have been living on savings.
2. In December of 2007, a request for a loan modification with CARRINGTON MORTGAGE SERVICES was denied due to lack of payment deficiency. I was told that in order for them to consider a modification I had to be late 2-3 months. On March 2008, I contacted Carrington Mortgage Services about possible modification and again I was denied this time because of lack of income. My only alternative was to come up with the arrears and continue paying. They were asking a minimum of \$10,000 for the two months before they could make any payment arrangements. On or around May 2008, I again talked to Carrington and they gave me the same explanation. Unless I get a job or improve my income status there is no other way but to give up the home I live in. So I tried other job markets form driving and operating a limousine service to working in a bakeshop and what ever came my way

but some how it was not enough to even pay the utilities. I tried renting out the rooms but with out an assurance that I was not going to be foreclosed it was difficult. A Notice of Default (NOD) and Notice to Trusty sale (NOT) was received and all possibilities were tried to remedy the situation.

- a) The property on the market for sale, which did not sell after 6 months
- b) I tried to refinance, but it was denied due to decrease in market value of the home.

I was given until April 15, 2009 to sell the house and I was unable to work out a payment plan. The payments are still too high, and cannot be afforded. I would really like to lower the mortgage payments. All efforts with CARRINGTON MORTGAGE and BANK OF AMERICA to help us by modification of the loan was ignored and created a great deal of hardship and stress to myself and family. I have all evidence if requested by the court. I am begging this court to hear us and be heard by Trial by Jury.

#### **RELIEF REQUESTED**

The Plaintiff asks this court to empanel a Grand Jury or to direct the plaintiff to an existing Grand Jury to investigate each and every defendant and their agents et al, for violation of the Antitrust Laws, Regulation "z" The Truth Lending Act Laws, Federal Racketeering Laws. Title 18 U.S.C. 1331 (mail fraud), Title 18 U.S.C. 1343 (wire fraud), Title 18 U.S.C. (pattern of racketeering activities), Title 18 U.S.C. 241 and 242 for conspiracy to threaten , depress, oppress and place hardship upon the Plaintiff and other customers who are in similar situations based on loans from said Defendants.

The Plaintiff asks this court, after the factual finding of said violations and more, to charge each defendant herein said and arrest them, as well as those who signed and certified the check/wire transfer with fraud and misrepresentations. Since the defendants did not have coins and currencies to cash their check, the charging the defendants is appropriate. And is further appropriate for not disclosing their fraudulent misrepresentation and for acts to sell the plaintiffs' property based on the above.

The Plaintiff asks this court for an INJUNCTION PREVENTING THE SALE OF PLAINTIFFS' PROPERTY AT A TRUSTEE, NON-JUDICIAL SALE OR A JUDICIAL SALE WITHOUT A TRIAL BY JURY TO DETERMINE THE DISPOSITION OF THE PLAINTIFFS' PROPERTY. And from the defendant and/or their investors or whomever attempts to acquire interest in the plaintiffs' property before a jury determination.

The plaintiff asks this court to TAKE JUDICIAL NOTICE OF ALL THE CONTENT OF THIS COMPLAINT AND THE FOLLOWING RELIEFS:

**WHEREFORE**, THE Plaintiffs, SILVERIO M. BARANDA and MONICA C. BABBEL, pray for judgment against the defendants and their agents as follows:

**AS TO THE FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT/COVENANT OF GOOD FAITH AND FAIR LENDING:**

1. For the release/return of all interest in said property.
2. For reasonable fees
3. For punitive damages
4. First cause: Lender has violated the rights of the plaintiffs: It is the duty of the lender or any person who represents the lender to be present at the time plaintiff s are signing the loan documents, explaining the contents of the loan disclosures. Lending described in the loan documents. Neither the title company or Lender explained the contents of the documents.

**AS TO SECOND CAUSE OF ACTION FOR FRAUD AND RACKETEERING:**

1. Fraud and Racketeering: Because plaintiffs were overcharged with excessive points and discounts by the lender as evidence by the title company's final closing statement. The loan documents were tapered by defendants and/or their agents.

**AS TO THE FOURTH CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF SEVERE MENTAL AND EMOTIONAL DISTRESS:**

1. Several times the plaintiffs have sent the income and expense documents, and it was never been taken into consideration. It took several months to tell the plaintiffs that it was not approved.

**DEMAND FOR TRIAL BY JURY (F)**

1. Plaintiff demand for trial by jury under the 7<sup>th</sup> amendment on all issues, including the issues on WHAT CONSTITUTES "AWFUL MONEY", of The United States. And that the jury shall be comprised of 12 members to determine all issues of facts in dispute and to determine and award all damages. And the plaintiff demands all their rights at all times and waive none of their rights at any time including the right to time.

**CONSENT TO DISTRICT JUDGE JURISDICTION (G)**

1. Plaintiffs request that a District Judge be designated to referee the herein matters and jury trial in this case. Plaintiffs allege to the court that their complaint should not be dismissed due to the above reasons and plaintiffs have full proof of evidence to be presented if requested.

I, SILVERIO M. BARANDA III, declare under the penalty of perjury the above is true and correct to the best of knowledge and belief.

DATE: 4/13/09

SIGNATURE: 